

State of California
BOARD OF EQUALIZATION
SALES AND USE TAX REGULATION

Regulation 1543. PUBLISHERS.

Reference: Sections 6006, 6015, 6094, 6244, 6362, 6379.5 and 6396, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) **ART DIRECTOR.** An art director prepares general specifications (in the form of verbal instructions or rough sketches) for an illustrator or photographer.

(2) **AUTHOR.** An author creates an original manuscript, whether written by hand, on a typewriter or computer, or otherwise, for the purpose of publication. For purposes of this regulation, the following persons are also authors:

(A) Copy editor, who reviews a manuscript for grammatical consistency and clarity.

(B) Developmental editor, who consults with the author who created an original manuscript for purposes of publication to develop the concepts in the manuscript, or who reviews the copy edited manuscript and recommends visual concepts.

(C) Manuscript reviewer, who reviews a manuscript for technical accuracy and acceptability to the proposed audience. For example, a reviewer may review the manuscript of a book on gardening for technical accuracy and suitability of the gardening advice for a particular climate.

(D) Photo researcher, who assists other authors or publishers in obtaining permission and rights from third parties to use photographic images for purposes of reproduction in the publication of a manuscript.

(E) Translator, who produces a manuscript that is a translation of material from a different language.

(3) **DESIGNER.** A designer plans and prepares a general layout of typographical and illustrative elements for printed literature.

(4) **FINISHED ART.** Finished art is the final artwork used for actual reproduction by photomechanical or other processes, or used for display. It includes electronic art, illustrations (e.g. drawings, diagrams, halftones, or color images), photographic images, sculptures, paintings, and handlettering.

(5) **ILLUSTRATOR.** An illustrator creates an illustration, which is an original artwork (including cartoons and comic strips) licensed for the purpose of publication.

(6) **PHOTOGRAPHER.** A photographer creates an original photographic image through the use of a camera or similar device, which photographic image is licensed for the purpose of publication.

(7) **PHOTOSTAT.** A photostat (also called a "stat") is a copy produced by photographic means, often used in layout, dummy work, or "for position only" on camera-ready art.

(8) **PRELIMINARY ART.** Preliminary art is tangible personal property which is prepared solely for the purpose of demonstrating an idea or message for acceptance by the client before a contract is entered into, or before approval is given, for preparation of finished art, provided neither title to, nor permanent possession of, such tangible personal property passes to the client. Examples of preliminary art include roughs, visualizations, layouts, comprehensives, and instant photos.

(9) **PRODUCTION FUNCTION.** A production function is a segment of the process of producing camera-ready art or camera-ready copy, and includes the following:

(A) Alterations, which are changes made to typeset copy or camera-ready copy.

Regulation 1543. (Continued)

(B) Dummy, which is a mock-up or layout of a page showing position and overall form, used for approval. A dummy can be assembled manually or generated by a computer program. A dummy is never physically incorporated into a mechanical or paste-up.

(C) Formatting, which is a manuscript mark-up, when done electronically.

(D) Manuscript mark-up, which is the application of type specifications to a manuscript for typesetting, when done manually.

(E) Mechanical or paste-up (also called camera-ready art or camera-ready copy), which is produced by preparing copy to make it camera-ready with all type and design elements, and then pasting the prepared copy on artboard or illustration board in exact position along with instructions, either in the margins or on an overlay, for the platemaker.

(F) Production Coordination or Production Direction, which is the coordination and scheduling of the various components of a project.

(G) Production Editing, which is editing that maintains editorial integrity of the author's work during the production process.

(H) Proofreading, which is a reading of typeset copy for correctness in comparison with the original manuscript.

(I) Typesetting, typography, or composition, which is the fabrication or production of composed type, or reproduction proofs thereof, for use in the preparation of printed matter. Typesetting, typography, or composition does not include the fabrication or production of a paste-up, mechanical, or assembly of which a reproduction proof is a component part.

(10) PUBLISHER. A publisher owns, outright or by license, the rights to reproduce, market, and distribute printed literature.

(11) SYNDICATOR. A syndicator receives from authors original manuscripts, or reproduction proofs thereof, including columns, cartoons, and comic strip drawings, and distributes those manuscripts to publishers for publication.

(b) APPLICATION OF TAX.

(1) AUTHORS.

(A) The transfer by an author to a publisher or syndicator, for the purpose of publication, of an original manuscript or copy thereof, including the transfer of an original column, cartoon, or comic strip drawing, is a service, the charge for which is not subject to sales tax. If the author transfers the original manuscript or copy thereof in tangible form, such as on paper or in machine-readable form such as on tape or compact disc, that transfer is incidental to the author's providing of the service, and the author is the consumer of any such property. However, the transfer of mere copies of an author's work is a sale of tangible personal property, and tax applies accordingly.

(B) Tax applies to charges for transfers of photographic images and illustrations, whether or not the photographic images or illustrations are copyrighted. Transfers of photographic images or illustrations illustrating text written by the photographer or illustrator are not taxable when they are merely incidental to the editorial matter.

(2) SYNDICATORS. The transfer by a syndicator to a publisher of impressed mats or proofs of syndicated columns, cartoons, or comic strip drawings for the purpose of publication is not subject to tax.

(3) DESIGNERS AND ART DIRECTORS. Fees paid to a designer or art director for his or her ability to design, conceive, or dictate ideas, concepts, or specifications are not subject to tax if the designer or art director does not transfer to the client or to any other person on behalf of the client title or possession of any tangible personal property used to convey the ideas. The designer or art director is the consumer of any paper, tape, film, diskette, or other tangible personal property used. Tax applies to the sale of such tangible personal property to, or use of such tangible personal property by, the designer or art director.

Regulation 1543. (Continued)

(4) PRODUCTION FUNCTIONS.

(A) Tax applies to the gross receipts from the retail sale of camera-ready art or camera-ready copy. The measure of tax includes charges for the performance of all production functions, whether the charges are separately stated or not.

(B) A contract under which a person performs only the following functions (or any combination of the following functions) is not subject to tax: manuscript mark-up, formatting, typesetting, proofreading, production coordination, and production editing. Charges for any of such functions are taxable when they are provided as part of the taxable sale of camera-ready copy or camera-ready art unless there is no contract for the camera-ready copy or camera-ready art until after such functions are completed, in which case the charges for such functions are nontaxable.

(5) CONTRACT TO PERFORM SERVICES AND TO FURNISH TANGIBLE PERSONAL PROPERTY. One person may, under a single agreement, contract both to perform author, design, or art direction services, and to produce camera-ready copy or art. If, under the terms of the agreement, the client retains the right to approve the manuscript, layout, or general specifications before authorizing preparation of camera-ready copy or art, and if the author, designer, or art director does not transfer to the client title to the layouts or possession of the layouts other than for the purpose of review and approval only, then separately stated charges for performance of the services are not taxable. In the absence of specific contractual language, proof of client approval shall be evidenced by contemporaneous notation of receipt of approval in the records of the author, designer, or art director. No other proof shall be required.

(6) PRELIMINARY ART. Tax does not apply to separately stated charges for preliminary art, except where the preliminary art becomes physically incorporated into the finished art, as, for example, when the finished art is made by inking directly over a pencil sketch or drawing, or the approved layout is used as camera copy for reproduction. The charge for preliminary art is separately stated if it is billed separately to the client, either on a separate billing or separately itemized on the billing for the finished art, provided it is clearly identified on the billing as roughs, visualizations, layouts, comprehensives, or other preliminary art. Proof of ordering or producing the preliminary art, prior to the date of the contract or approval for finished art, shall be evidenced by purchase orders of the buyer, or by work orders or other records of the seller. No other proof shall be required. Tax applies to the total charges made for finished art. If there is no separately stated charge for preliminary art, then there is no deduction for such services from the taxable measure for the sale of the finished art except as provided in subdivision (b)(2)(C) of Regulation 1540.

(7) SALES BY PUBLISHERS. Sales of printed literature are subject to tax unless the sale is for resale or is specifically exempted by law, e.g., qualifying sales of printed sales messages and sales in interstate and foreign commerce.

(8) TRANSPORTATION CHARGES AND SERVICES RELATED TO TRANSPORTATION. Tax applies to charges for the transportation of printed matter in connection with a taxable retail sale except as provided in Regulation 1628.

Separately stated charges for services such as addressing (by hand or by mechanical means), folding, enclosing, or sealing directly related to the transportation of printed matter to the customer are not subject to tax. Tax applies, however, to charges for envelopes except as otherwise provided in Regulation 1541.5.

(9) PURCHASES OF PROPERTY FOR RESALE. Tax applies to the purchase of tangible personal property that is consumed in any production function and does not become a part of the finished product. However, a person may purchase such property for resale if that person's contract of sale with its client explicitly passes title to the property to that person's client prior to its use. Tangible personal property so purchased must be separately listed and priced on the person's sales invoice to the client and sales tax applies to that charge.

(10) REPRODUCTION RIGHTS. Notwithstanding anything to the contrary in this regulation, if the transfer of a photographic image or artwork is made pursuant to a technology transfer agreement under subdivision (b)(2)(D)2. of Regulation 1540, tax applies to the transfer of the artwork in accordance with that provision.

(c) EXAMPLES OF THE APPLICATION OF TAX UNDER SPECIFIC CIRCUMSTANCES.

(1) A firm provides various services to a publisher. In performing a contract with the publisher, the firm buys a color separation from a third party. The firm does not make a copy of the color separation or use it in any way, but resells it to the publisher. The firm may give a resale certificate to the third party but tax applies to the sale to the publisher.

(2) The firm in Example (1) uses the color separation before reselling it to the publisher. Both the firm and the publisher are consumers, and both sales are subject to tax.

(3) The firm in Example (1) buys both the color separation and a photostatic copy of it from the third party who separately states the price of each item on the sales invoice. The firm retains the photostatic copy but resells the color separation to the publisher without using it in any way. Since the third party used the color separation to make a copy of it, the sale of the component parts to the third party, or the third party's use of those component parts, is subject to tax. The firm may give a resale certificate to the third party for the color separation, but tax applies to the third party's sale of the photostatic copy. Tax also applies to the firm's sale of the color separation to the publisher.

(4) A firm contracts with a publisher to perform a contract in three stages, as follows:

(A) The firm creates an original manuscript of a book. The publisher reviews the first draft, comments on it, and approves it. The firm then does developmental editing, in which the writer and editors develop the manuscript for sound editorial structure and organization. The publisher reviews the resulting second draft, comments on it, and approves it. The firm then does copy editing, in which editors review the manuscript for grammatical consistency and clarity. After this, the firm passes title to the manuscript to the publisher for the purpose of publication. Under the contract, the firm can proceed with further work only with the publisher's approval.

Tax does not apply to the sale of the finished manuscript or to any of the steps of writing and editing it.

(B) In the second stage, the publisher returns the accepted manuscript to the firm for typesetting into galleys, which the publisher reviews and approves. The firm then arranges the galleys into page form, which the publisher reviews and approves. The firm then produces camera-ready art, which the publisher reviews for approval or alterations. The publisher then accepts and takes title to the camera-ready art.

Tax applies to the firm's gross receipts from the sale of the camera-ready art, including formatting, typesetting, proofreading, and production coordination, whether separately stated or not. To preserve the nontaxable status of the receipts described in Example (4)(A), the charges for work done in Example (4)(A) must be separately stated from the charges for the sale of the tangible personal property in this Example (4)(B).

(C) In the third stage, the publisher returns the camera-ready art to the firm for printing. The firm subcontracts the printing to a printer. The firm manages the quality of the printing. A representative of the publisher visits the printer to approve the work. At the firm's instruction, the printer ships the completed books to the publisher's warehouse.

Since the firm will be reselling the books to the publisher without using them, the firm may issue a resale certificate to the printer. Since the publisher intends to resell the books, the publisher may issue a resale certificate to the firm. Tax applies to sales of the books by the publisher to consumers unless the sales are specifically exempt by statute (e.g., sales in interstate commerce).

(5) A publisher owns an existing manuscript. The publisher contracts with an editorial design firm for developmental editing, copy editing, and design specifications. The firm reviews the manuscript and makes recommendations to the publisher for developing it into publishable form, including recommended layout and a general approach to design (e.g., trim size). After the publisher accepts these recommendations, a designer (at the firm or a subcontractor) prepares sample sketches and dummies to express the idea to the publisher. After the publisher approves the sketches and dummies, the designer creates type specifications. A developmental editor and a copy editor (at the firm or a subcontractor) perform development and copy editing services. The edited manuscript, dummies, and type specifications are transferred to the publisher.

Tax does not apply to the editing services because they are author's services. Tax does not apply to charges for the dummies and type specifications if those charges are separately stated and if possession and title is retained by the editorial design firm.

Regulation 1543. (Continued)

(6) A publisher has an office in California and an office in New York. The publisher's California office purchases camera-ready art from a California production firm with title passing in California. However, the production firm, on instructions from the publisher, ships the camera-ready art directly to the publisher's New York office for use at the New York office, with no use of the camera-ready art in California.

Tax does not apply to the production firm's gross receipts from the sale of the camera-ready art, because the sale is in interstate commerce.

(7) A commercial artist (such as a commercial photographer or illustrator) makes a temporary transfer of finished art (such as a photograph or illustration) that qualifies as a technology transfer agreement under subdivision (b)(2)(D)2. of Regulation 1540 to a publisher for purposes of reproducing the finished art in a children's book. The publisher makes a computer scan of the finished art and returns the original finished art to the commercial artist. The publisher incorporates the computer scan into layouts which are used to reproduce the finished art in the printed children's books, which are then sold. The commercial artist is paid an advance against royalties, and is then paid royalties based on retail sales of the children's book. The commercial artist does not make a separate charge for the tangible personal property leased to the publisher in accordance with subdivision (b)(2)(D)2.a. of Regulation 1540. As provided in subdivision (b)(2)(D)2.b. of Regulation 1540, if the commercial artist has leased like property for a separate price to an unrelated third party without also transferring an interest in the copyright, or has leased that finished art or like finished art for a separate price satisfying the requirements of subdivision (b)(2)(D)2.a. of Regulation 1540, then tax applies to that separate price. Otherwise, tax applies to the commercial artist's transfer as specified in subdivision (b)(2)(D)2.c. of Regulation 1540. Except for the tax due under subdivision (b)(2)(D)2.b. or (b)(2)(D)2.c. of Regulation 1540, no further tax is due on the royalties or the advance paid to the commercial artist. Tax applies to the retail sales of the children's book unless specifically exempt by statute.

History: Adopted July 31, 1990, effective March 17, 1991.

Amended December 11, 1991, effective April 18, 1992. Chapter 85, Statutes 1991, repealed the exemption from tax for the sale of newspapers and periodicals and for sale of a photograph when possession, but not title, was transferred to be produced one time only in a newspaper regularly issued at average intervals not exceeding three months. Chapter 88, Statutes of 1991, changed the effective date from July 1, 1991 to July 15, 1991.

Amended July 24, 1996, effective November 23, 1996. Added subdivision (a)(9); amended subdivision (b)(1)(A) to include sales by an author of an original manuscript or copy thereof, including an original column, cartoon, or comic strip drawing, even if in machine-readable form; added new subdivision (b)(2) and re-numbered former subdivisions (b)(2-8) accordingly.

Amended May 29, 2002, effective September 18, 2002. Term "photograph(s)" changed to "photographic image(s)" throughout to reflect changes in usage in the industry. Subdivision (a)- generally rewritten. Subdivision (a)(5) & (6) added. Subdivision (b)(1)(A)- phrase "a ... tax" added; second sentence re-written to convert to active voice; phrases "the transfer of" and "is ... accordingly" added to third sentence and phrase "tax ... sale of" deleted. Subdivision (b)(3)- phrase " , or ... by," added. Subdivision (b)(4)(B)- word "only" moved; phrase "(or ... functions)" added, and word "Manuscript" changed to lower case; in second sentence word "If" deleted, phrases "Charges for any of", and "are ... unless" added, phrases " , ... that" and "in which the" deleted. Subdivision (b)(6)- re-titled "PRELIMINARY ART"; word "stated" added to first sentence, phrase "is ... is" and word "itemized" added to second sentence and phrases "must be", "charged for", and " . It ...be" deleted; new sixth sentence added. Subdivision (b)(8)- phrase "AND SERVICES RELATED TO TRANSPORTATION" added to title, phrases "In general, " and "tangible ... see" and "Transportation Charges" deleted in first sentence and phrase "Printed ... in" added and word "Tax" changed to upper case; in un-numbered paragraph, phrases "such ... directly," "matter" and "except ... 1541.5" added and words "directly" and "material" and "the" and "e.g. ... sealing" deleted. Subdivision (b)(9)- words "that ... passes" and "and ... charge" added and language "passes" and "and ... appropriate" and last three sentences deleted. Subdivision (b)(10) added. Subdivision (c)(3)- words "stat" and "his" deleted and phrase "the sales" added to first sentence; the word "stat" deleted and the phrase "photostatic copy" added in second sentence; third sentence added. The word "stat" deleted and the phrase "photostatic copy" added in the fourth sentence. Subdivision (c)(4)(B)- words "exempt" and "above" and "receipts" and "should" deleted and phrases "nontaxable" and "must" and "charges ... done" and "charges ... property" added. Subdivision (c)(4)(C)- words "The" and "furnish" and " , who ... way.)" deleted from first sentence and phrase "Since ... the" and "issue" added to first and

Regulation 1543. (Continued)

second sentences; phrases "of the books" and "unless ... commerce.)" added to third sentence. Subdivision (c)(5), un-numbered paragraph- phrases "charges for" and "those charges" added and the phrase "the ... specifications" deleted. Subdivision (c)(6)- phrase "for ... California" added. Subdivision (c)(7) added.

Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.